

COUNTERPART NO. 6  
OF 6 COUNTERPARTS

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AGREEMENT

Dated as of August 1, 1971

RECORDATION NO. 8274 Filed & Recorded

AUG 9 1971 2 00 PM

INTERSTATE COMMERCE COMMISSION

between

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

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Covering

65 3,000 H.P. Model  
GP-40 Diesel-Electric  
Locomotives

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THIS AGREEMENT, dated as of August 1, 1971, by and between  
GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware  
Corporation (Manufacturer), and THE BALTIMORE AND OHIO RAILROAD  
COMPANY, a Maryland corporation (B&O);

W I T N E S S E T H :

The Manufacturer and B&O heretofore entered into a Locomotive  
Proposal No. 70-L-3 (Revised), dated December 16, 1970 and accepted  
February 17, 1971 (a copy of which Locomotive Proposal is made a part hereof  
by reference), whereunder the Manufacturer agreed to construct and deliver  
to B&O, and B&O agreed to accept and pay for the following railroad equipment  
(Locomotives):

65 3,000 H.P. Model GP-40 diesel-electric locomotives,  
to bear B&O's road numbers 4000-4064, inclusive.

Delivery of the Locomotives by the Manufacturer to B&O is scheduled to  
begin in August, 1971. However, inasmuch as B&O has not as yet consummated  
financing arrangements (pursuant to an Equipment Trust Agreement, or otherwise),  
it is not in position to accept delivery of and pay for the Locomotives under the  
terms of the Locomotive Proposal at this time. B&O represents that such  
financing arrangements will be consummated, however, on or before October 15,  
1971. B&O (in order that it may use the Locomotives pending completion of the  
above financing arrangements) has arranged with the Manufacturer to give it  
temporary custody and possession of the Locomotives on their completion, solely  
as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the  
terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to B&O at Barr Yard, Illinois, or such other place as may be specified by B&O, for the period ending on the earlier of October 15, 1971, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Locomotives shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Locomotives.

B&O agrees that it will permit no liens of any kind to attach to the Locomotives; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer because of its ownership or because of the use, operation, management or handling of the Locomotives by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Locomotives in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of the Agreement.

Prior to the delivery of each Locomotive to B&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"BALTIMORE AND OHIO RAILROAD EQUIPMENT  
TRUST OF 1971, MERCANTILE-SAFE DEPOSIT  
AND TRUST COMPANY, TRUSTEE, OWNER,  
LESSOR".

B&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives as provided in the Purchase Proposal, may be assigned by the Manufacturer and reassigned

by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Proposal relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Purchase Proposal, and B&O receives written notice thereof from the Manufacturer together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Proposal, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all such obligations howsoever arising, shall be and remain enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Locomotives, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase Proposal, or impair any of the Manufacturer's rights under the Purchase Proposal.

Attest:

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

*J. A. [illegible]*  
Assistant Secretary

By *L. D. [illegible]*  
Vice President

Attest:

THE BALTIMORE AND OHIO RAILROAD COMPANY

(Corporate Seal)

*D. J. [illegible]*  
Assistant Secretary

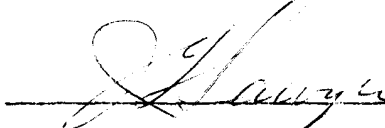
By *X. C. [illegible]*  
Treasurer

*12 2 14*

STATE OF ILLINOIS    )  
                              )   SS:  
COUNTY OF Clark    )

On this 27 day of August, 1971, before me personally appeared  
B. B. BROWNELL , to me personally known, who, being by me  
duly sworn, says that he is a Vice President of General Motors Corporation  
(Electro-Motive Division), that one of the seals affixed to the foregoing  
instrument is the corporate seal of said corporation, that said instrument was  
signed and sealed on behalf of said corporation by authority of its Board of  
Directors and he acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

(Notarial Seal)

  
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Notary Public  
My Commission Expires NOVEMBER 28, 1971

STATE OF MARYLAND)  
                              )   SS:  
CITY OF BALTIMORE    )

On this 29th day of July, 1971, before me personally appeared  
L. C. Roig, Jr. , to me personally known, who, being by me duly sworn, says  
that he is the Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY,  
that one of the seals affixed to the foregoing instrument is the corporate seal of  
said corporation, that said instrument was signed and sealed on behalf of said  
corporation by authority of its President and Directors and he acknowledged that  
the execution of the foregoing instrument was the free act and deed of said  
corporation.

(Notarial Seal)

  
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Notary Public  
My Commission Expires July 1, 1974